File No. 23 of 1904 05
Serial Nos. 1 to 5.

1904.

GENERAL AND REVENUE SECRETARIAT.

(Courts.)

Part A: Manuscript
for
December 1904.

Serial Nos.

Refund of half the institution fee in cases in which the defendants admit the claims.

G.R.S. 11] 1904-05

GENERAL AND REVENUE SECRETARIAT.

(Courts)

NOTES.

File No. 23.

FILE HEADING.

Refund of half the institution fee in cases in which the defendants admit the claim.

From

The Registrar, Chief Court.

No. 210/15 Dated 12th June 06. Received

Diary No. J 115	— Enclos.	Spare Copies.	Serial No. 2

BRIEF ABSTRACT OF LETTER.

States that the Chief Justice & Justice Mr. A. Rangaswamy Iyengar think that the present law as set forth in Sec 17 A of the Civil Courts Regulation provides all necessary relief and that Justice Mr. Narayandasappa while agreeing with this opinion suggests the omission of the words "by agreement of parties" in the Said Section

NOTES AND ORDERS.

In this office No. 2182 of the 15th April 1902. the Registrar was requested the favor of his obtaining the views of the Judges of the Chief Court. on the general subject Vide Sec 83 of the C.P.C. Proc of 1903, Refunding half the institution.

Sec 32. h

NOTES—First sheet.

MGCPB—5,000—18-5-04

General and Revenue Secretariat.

File No. 23 of 1904-05

Serial No.

fee. when the defendants admit the Claim.
Section 17 A which contains the rules
as to refund of half fee. restricts the
refund to cases disposed of without Contest
by agreement of parties.

Submitted for order.

2. I venture to think that
something may also be said
in favour of the suggestion made
at the last Representative Assembly
Why should a clear admission of
the claim, made by the defendant in
Court at the earliest opportunity,
be not treated differently from
a mutual agreement of the
parties arrived at after the insti-
tution of the suit or appeal? The fact
that the defendant admits the claim is
by itself sufficient to constitute an agreement
for all practical purposes. I am

MGCPB—10,000—19-4-04

G.R.S. 12]

General and Revenue Secretariat.

File No. 93 of 1904-05

Serial No.

sure at the same time that the purport of the representation has been fully expressed in the published Proceedings Volume: What was complained of (if I remember right) was that the Chief Court by a rule of practice or ruling requires the production of a written document embodying the terms of the agreement between the parties, though section 17A of the Act did not require this. However this may be, it seems worthy of consideration whether the representation cannot be met by a small amendment of section 17A, viz. the substitution of the following for the words "without contest, by agreement of parties":- "without contest, either on an agreement of the parties reported to the Court, or on an unqualified admission of the defendant made in Court, (at the earliest opportunity) before issues are settled or evidence recorded."

A Refer to my original note & with Mr Shamasastry's letter on this point. 1/4

On second thoughts I think the 4 words within brackets may be omitted 1/4 30/4

3. This amendment does not go as far as that suggested by Mr Justice [redacted]

MGCPB—10,000—19-5-04

G.R.S. 12]

General and Revenue Secretariat.

File No. 23 of 1904-05

Serial No.

Who would grant a refund even where the defendant does not turn up to admit or deny the claim & the case is thus disposed of ex parte.

Jo 18th Cr

Mohandas Gandhi
28.7.04.

1179
28-7-1904

4. If I am not mistaken, our section 17 A. has no parallel in the British Indian Act - Please see the papers relating to the circumstances under which it was put in by Regulation II of 1898 Section 3 -

Sd/- S
29/7/04.

Please comply
28-7-1904

11/29/04

Legislative file No 47 of 1895 which contains the papers on the subject is submitted

30/7/04

5. Please see, in particular, para 3 of your letter No 9198 Leg 45 of 4.2.95 to the Re-

NOTE—Contn. sheet.

MGCPB—10,000—19-5-04

G.R.S. 12]

General and Revenue Secretariat.

File No. 23 of 1904-05

Serial No.

Which shows that similar provisions are contained in section 73 of Act XV of 1882 (Presidency Small Cause Courts Act) and in s. 13 of Act VII of 1892 (Madras City Civil Court Act). In readily reference these provisions are quoted below:-

Sec. 73 of Act XV of 1882:-

"Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of all fees paid & up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid."

Sec. 13 of Act VII of 1892:-

"Whenever any suit or proceeding in the City Court is settled by agreement of the parties before issues have been settled or any evidence recorded, half the ~~amount~~ of the institution fees paid by the plaintiff shall be refunded to him by the Court."

Rd (19) 30-7-04

NOTE—Contn. sheet.

MGGPB—10,000—19-5-04

31.7.04

G.R.S. 12]

General and Revenue Secretariat.

File No. 23 of 1904.

Serial No.

6. In Sl Nos 9 & 12, a refund of half the institution fee was first suggested in cases "compromised out of Court"

7. In Sl Nos 27 & 29 the then Under Secretary Mr K. V. Manjunadayya went beyond the Small Causes Court Act and the Madras City Civil Courts Act, and misread of "without contest, by agreement of parties", proposed the words "without contest, either by agreement of parties, default of appearance or otherwise" this reason for so doing (Vide Sl No 30) being expressed in the following words: "I have ventured to make an addition in favor of allowing a refund in all cases... in which the labour of recording evidence and coming to a decision thereon is saved to the

MGCPB—10,000—19-5-04

G.R.S. 12]

General and Revenue Secretariat. | File No. 23 of 1904.

Serial No.

Court".

8. The High Court were consulted in regard to the desirability or otherwise of adopting this addition. Mr Justice Best & Mr Justice Moonakshya (Vide Sl. No. 36) agreed to the addition which Mr Justice Ramachendra Iyer opposed it and suggested that the words underlined above namely "either" and "default or matter or otherwise" be omitted for the reasons assigned in his Minute. The Government (Sl. No. 43) in concurrence with Mr Ramachendra Iyer decided the words latter exception to by him; and the draft Regulation was passed accordingly. On sending it up to the Govt of India for sanction it was stated that the Provision as passed (with the omission noted above) would have a wholesome

Note—Contn. sheet.

MGCPB—10 000—19-5-04

G.R.S. 12]

General and Revenue Secretariat. | File No. 93 of 1904-05

Serial No.

effect - in reducing Courts to terminate litigation by mutual agreement - (Note. These were practically Mr Ramachandra Iyer's words). Similar provisions, I may add, are contained in Section 73 of Act XV of 1882 (Presidency Small Causes Act) and in Section 13 of Act VII of 1892 (Madras City Civil Courts Act)".

9 And now the question is whether a case disposed of by admission" is a case disposed of "without contest, by agreement of parties"; in other words, whether an agreement in writing in any letter or mutual adjustment than an admission made in Court at the initial stage of a case - Neither Mr Ramachandra Iyer's Minute of 1896 with which Good-

MGCPB—10,000—19-5-04

G.R.S. 12]

General and Revenue Secretariat. | File No. 23 of 1904-05

Serial No.

concerned nor his subsequent Minute with which the Present Chief Judge (Mr Slater) & Mr Justice Ranganadhayya are now reported to agree, seem directly to touch the question of admission in terms including or excluded from the exception "by agreement of parties". A case of "dismissal" by admission is not a case of "dismissal by default of appearance or otherwise" or of a deft "not choosing" to contest a claim". It is then entirely a question of construction. In both cases, Mr Ramchandra Iyer's first minute - Q

His second minute - Q.

In both cases, I should think mutual agreement there is, and so too is there a desirability to terminate litigation. The only difference is that instead of presenting a document reporting the arrangement, the deft makes an admission at the

MGCPB—10,000—19-5-04

G.R.S. 12]

General and Revenue Secretariat. | File No. 93 of 1904.

Serial No.

first hearing - That being so, I confess my inability to understand why there should be a refund in the one case & none in the other. As the cases objected to by the Ramachandra Iyer with whom the Collector & the Rangaswamiyer agree, I am certainly unwilling to extend the benefit of the exceptional provision under discussion as advocated by the Narayanaswamy - My humble opinion is that the present law needs all requirements & that if it does not all that is required is a slight verbal amendment - So as to extend it ~~to~~ "administrations" the same principle as in "agreements" - Before taking further action however a communication may be addressed to the Chief Court explaining their view of the matter - and an attempt may

MGCPB—10,000—19-5-04

Jdl No. 703/04

also be made to ascertain how the provision in regard to Repund which is practically the same both in Mysore & in Madras is being interpreted and acted upon, in the latter

C Seshachariar
1/8/04.

10. Submitted to the Dewan Sahib
&
2.8.1904

703/3.8.04.

11. I am disinclined to agree with the 7th Commissioner. If a Dyt admits a prosecution follows it is difficult to regard it as a prosecution without consent by the appointment of pleaders. Explanation should be given in such a case & if the refund and non-allowance the difference in the treatment can be justified

Draft
11/9

Rejected
12. Draft sent
&
1.9.1904

30.VIII.04

13 Draft Sent
3/9/04

3.9.04

Draft sent
9/9

11. Passed
7-9-1904

General and Revenue Secretariat.

File No. 23 of 1906-05

Serial No. 3

2. The Registrar of the Chief Court of Oudh No. 717 J dated the 14th Sept. 1906.

States that if a defendant admits a claim a judgment follows, it is difficult not to regard it as a judgment without contest by an agreement of parties & requests that he may be informed of the present practice in former cases & how any difference in the 2 Acts of cases can be justified

4. From the Registrar of the Chief Court No. 2928/178 dated the 26th November 1906.

States that the present practice in all the Civil courts is not to grant refund of half the institution fee in cases in which decrees are passed merely on defendants admitting the claim without contest, but that there is nothing in the terms of Sec 17 A of the Civil Courts Act to prevent an order being passed by a court for such refund in cases where without contest the defendant appears and admits the plaintiff's claim if the Court is satisfied that the parties

NOTE—Contn. sheet.

MGCPB—10,000—19-5-04

G.R.S. 12]
General and Revenue Secretariat.

File No. 23 of 1904-05

Serial No.

have come to an agreement. & that the
Civil courts will be directed accordingly &
make appeals in cases as questioned.
Submitted for orders
2/12/04. 2.12.04

15 The views now expressed by the Chief Court, and the instructions issued by them, to the subordinate Civil Courts, render an amendment of O. 17A unnecessary for the present. The point will, however, be noted in the Legislative Dept in view to the language of that section being revised, or as to include admissions, when next the Civil Courts Regr is taken up for amendment.

16 The correspondence may be recorded with the remark that the Govt concur in the view taken by the Chief Court.

17 Draft an order accdy, quoting the views aforesaid in the body of the order.

18 Draft L/P - with the circular letter reported 2-12-04
2/12/04

19 Drafts submitted 6.12.04

1163 7-12-04

NOTE—Contn. sheet.

MGCPB—20,000—1-11-04

Hon'ble Khan Sahib Thos Thos Sd Councillor
6.12.1904

G.R.S. 12]
General and Revenue Secretariat.

File No. 23 of 1904 C-05

Serial No.	
20	Dear Abbott. The matter has been satisfactorily settled. C.
	8/12/04.
	8/12/1904.
3298/9.12	Do the Registrar of the Chief Court of Upper Burma No. J 1624/C.123.5 dated 20/12/04 Records the above letter.
	To the Asst Secretary in Charge of the Representative Assembly Report Section No. J 1625/C.123.5 dated 20/12/04. Forwards copy of the above

MGCPB—20,000—1-11-04.

Davara French Jc 7 23/04.

1904.

From.

The Secretary to Government,
General and Revenue Departments

To.

The Registrar, Chief Court.

Dated Bangalore, 11th April 1904.

No. 2182

-oooooOoooo-

General Subject No. 53 of the D.R.A. (1903).
-o-o-o-o-o-o-o-

Refund of half of the institution fee may be ordered to be made in cases in which defendants admit the claim. It is difficult to distinguish these cases from the cases which are disposed of by agreement of parties without contest.

With reference to the subject in the margin, has the honor to request that he will be so good as to favor the Government with the opinion of the Judges of the Chief Court, regarding the advisibility or otherwise, of granting the request.

"By Order"

12/4/04

for Secretary.

Letter

No 210/19 | G. No. 2 Jer 23 Jn-05

9115

2

Bangalore, 12th July 1904.

From

V. A. Raja Rama Iyengar Esq.
Registrar, Chief Court of Mysore.

To

B. K. Venkatavaradiengar Esq.,
Secretary to Govt. of Mysore,
Genl: & Rev: Depts.

Sir,

With reference to your No. 2182/J dated the 15th April 1904 regarding the question of refund of half fee under Section 17A of the Mysore Civil Courts Regulation, I am directed to state that the Chief Judge and Mr. Justice Rangasawmi Iyengar agree with the opinion already expressed by the late Chief Judge as noted on the margin. They think the present law provides all necessary relief if the parties choose to take

× When the Regulation sanctioned the refund of moiety of institution fees in certain cases, I presume that the intention was to facilitate peaceful adjustment of disputes. I do not see why a present of half the fee should be made to a defendant who is either too careless or too proud to come to terms with his adversary. If the parties come to terms, why should not the agreement be reported to the Court? The bare fact that a defendant does not choose to contest a claim does not prove an adjustment by agreement. The Regulation serves a good purpose which would be defeated by making an amendment as suggested by the members.

advantage of it.

Mr. Justice Ranjundayya, while agreeing that this opinion is the correct one to give as the Section now stands, would suggest that it may with advantage be amended by omitting the words 'by agreement of parties'. He considers that the object of charging only half fees is to encourage parties not to engage in frivolous or vexatious contests and to allow for the very much smaller work thrown on the Courts, and that if this amendment is made, a rider would be necessary to provide for the levy of the portion foregone, if the defendant should subsequently apply to the Court and obtain an order for reopening the case and that this additional expense would very reasonably fall

G.R.S. 26]

File No. 23 of 04-8

Serial No. 3

Diary No. of letter replied to

No. 717-J.

General and Rev. Secretariat
( )
, *the* 190 .

To

The Registrar of the Chief Court of Mysore.

Date of issue 14-9-04

Signed by B.K. Venkatavarada Iyengar

Sir,

Adverting to your letter No. 210 dated the 12th July 1904, regarding the refund of half the institution fee in cases in which the defendants admit the claim as agreed to in Subject No. 32 of the Representative Assembly's Proceedings for 1903, I am directed to ~~state~~ that if a Defendant admits a claim and a judgment follows, it is difficult not to regard it as a judgment without contest. ~~by the agreement of parties.~~ I am therefore to request the favour of your intimating ~~whether~~ in what cases it is to be found as ~~to whether~~

over.

SUBJECT.

for the information of
His Government with reference to
the present
the ~~case~~ forwarded in the case referred to by the Members of the
Representative assembly.
and how any difference in
the treatment of the two sets of cases
can be justified:
~~if the refund is not allowed.~~

I have &c.

Secretary

7.9.1904

WR 9.9.04

WR 3/9/04 WR 3.9.04

3/9

List of enclosures.

Copied by W.H.R. 7-9-04

Examined by WR 7-9-04

Re copied by Fig 10-9-04

Ex^d: WR 10.9.04

MGCPB—5,000—20-5-01

Bangalore, 26th Nov. 1904

From

V. A. Raja Rama Iyengar Esq.
Registrar, Chief Court of Mysore

To B. K. Venkataveeradaiengar Esq.
Secretary to Govt. Gl. & Rev. Depts.

Sir,

Adverting to your letter No. 7177 dated the 14th September 1904, I am directed to state that the present practice in all the Civil Courts is not to grant refund of half the institution fee in cases in which decrees are passed merely on defendants admitting the claim without contest. There is however nothing in the terms of Section 17A of the Mysore Civil Courts Regulation II of 1898 to prevent an order being passed by a Court

Court for refund of half the in-
stitution fee paid on a plaint
where without contest the defen-
dant appears and admits the
Plaintiff's claim, if the Court there-
by be satisfied that the parties
have come to an agreement.
The claim and the admission
without contest are ordinarily
sufficient to constitute an agree-
ment of both parties, where the
admission of the plaintiff's claim
by the defendant is full and
unconditional. The subordinate
Civil Courts will be instructed
accordingly.

I have the honor to be,
Sir,
Your most obedient servant;

[signature]
Registrar

Wm

G.R.S. 28]

File No. 23

Serial No. 5

Diary No. of letter replied to J 1057

Proceedings of the Government of His Highness the Maharaja of Mysore.

GENERAL AND REVENUE SECRETARIAT.
(Courts)

, the 20/12/ 1904

Date of issue 20/12/04

Signed by Mr. K. S. Chandrashekara
Asst. Sec.

READ.—

Correspondence ending with the letter No. 2520/178 dated the 26th November 1904 from the Registrar of the Chief Court in the matter of the refund of half the institution fee in cases in which the defendants admit the claim (Subject No. 32 of the Representative Assembly Proceedings for 1903.) (Print the letter in extenso)

ORDER THEREON—No.

Recorded. ~~with the usual~~ The Government concur in the views taken by the

over

Rec'd 16/12/04.

Submitted
12.12.1904

Subject

Chief Court that there is nothing in the terms of Sec 17 of the Mysore Civil Courts Regulation II of 1884 to prevent an order being passed by the Court for refund of half the institution fee ~~paid~~ in cases ~~appeal~~ where without Contest the defendant appears and admits the Plaintiffs' claim, if the Court is satisfied that the parties have come to an agreement, & that the claim and the admission without Contest ~~by~~ and admission sufficient to Constitute an agreement of both parties. Where the admission of the Plaintiffs' claim by the defendant has been full and unconditional.

Copied by. dgs. 7/12/04.
1904 Examined by. SN 17/12/04

6-12-1904
Secretary
to the Register of the Chief Court.

9/1622 c.23-5 9/20/10/04

This is the assistant Secretary in charge of the Representative Assembly Report Section
Bangalore 6-12-1904

Secretary.

Seen 6.12.1904